

June 13, 2014

Gregory J. Rubens, Esq.
City Attorney, City of San Carlos
1001 Laurel Street, Suite A
San Carlos, CA 94707

Re: Your Request for Advice
Our File No. A-14-090

Dear Mr. Rubens:

This letter responds to your request for advice regarding the conflict of interest provisions of the Political Reform Act (the “Act”).¹ Nothing in this letter should be construed to evaluate any conduct that has already taken place. In addition, this letter is based on the facts presented. The Fair Political Practices Commission (the “Commission”) does not act as the finder of fact. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

QUESTIONS

1. Do you have a conflict of interest that prohibits you from advising the city council regarding an election for abandonment of a city park, located a mile from your residence, that would free the city to sell that parcel when it is “merely possible” that the funds from that sale could be used to purchase property near you home?

2. Does the Act prohibit you from advising the city council regarding potential negotiations to buy property that is within 500 feet of your home?

CONCLUSIONS

1. No. Based on your facts, it is not reasonably foreseeable that decisions regarding the sale of the property will have a material financial effect on your interest in your residence, and there does not currently appear to be any correlation between those decisions and hypothetical decisions involving a property near your home.

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

2. Yes. Because it is reasonably foreseeable that the city's purchase of property that is within 500 feet of your home would have a material financial effect on your interest in your property, the Act presumes you have a conflict of interest that prohibits you from participating in related governmental decisions.

FACTS

You are the contract City Attorney for the city of San Carlos. You own your home in San Carlos, which is situated near a parcel of vacant land divided into several lots. The owner of that land asked the local school district if it would like to purchase it to build additional classroom space. The district has informally asked city staff if the city could assist in the purchase. Your home is within 500 feet of a portion of this property ("school district property"). There are no decisions pending regarding the school district property at this time, and all discussions are hypothetical involving a variety of variables.

Another piece of property ("park property") is the subject of a city-wide election to determine whether to abandon the designation of "city park." If the election outcome favors abandoning the park, the city would then be able to sell that land. This vote could lead to several unknown variables, including change to the park property designation, selling the park property once it is no longer designated a park, and using that money to purchase additional park property in another area of the city. If the city decides to buy additional park space, and the school district property's current owner decides to sell, and the school district decides to buy, the city could participate in that purchase. These are all hypothetical scenarios and no decisions involving the park property are currently being discussed, pending the outcome of the election. You would like to advise the city council regarding the election to abandon the park property designation and other issues that might arise regarding that property.

ANALYSIS

Section 87100 prohibits any public official from making, participating in making, or using his or her official position to influence a governmental decision in which the official has a financial interest. A public official has a financial interest in a governmental decision, within the meaning of the Act, if it is reasonably foreseeable that the decision will have a material financial effect on one or more of the public official's interests as set forth in Section 87103 and that effect is distinguishable from the effect on the public generally. (See also, Regulation 18700(a).)

Are you a "public official" making a governmental decision?

You have identified that, as a contract city attorney, you are a public official under the Act. (See Section 82048 and Regulation 18701(a)(2)(B) for definition of "consultant.") You also explained that you will be advising the city council and making recommendations regarding upcoming property decisions. The Act considers such involvement in the city council's decision-making as "participating" in a decision. (Regulations 18702.1, 18702.2.) The only decisions at issue currently pertain to the park property. There is no decision pending regarding

the property located near your house, but you have inquired whether the Act permits you to advise the city council should matters arise.

Is it reasonably foreseeable that your interest would be materially affected by the governmental decisions?

Section 87103 provides that a public official has a financial interest in a governmental decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effects on the public generally, on the official, a member of his or her immediate family, or on any of his or her financial interests. An official has an interest in real property in which he or she has a direct or indirect interest of \$2,000 or more. (Section 87103(b); Regulation 18703.2.) Based on your facts, you have an interest in your home in San Carlos.

Recently adopted Regulation 18705.2 (copy enclosed) states that a decision has a material financial effect on real property in which the official has an interest if it meets certain threshold factors. The possible pending decisions pertain to the park property, which is one mile to one and a half miles from your home. None of the decisions regarding the park property meet any of the threshold materiality standards. Therefore, it is not reasonably foreseeable that decisions regarding any potential sale of the park property will have a material financial effect on your interest in your residence.

You have also asked whether you can advise the city council regarding the city's potential purchase of the school district property, which is within 500 feet of your residence. All such decisions are speculative at this time. Based both on your property's proximity to the subject property and the fact that the city's potential purchase could change the character of the neighborhood, it is reasonably foreseeable that the city's purchase of that property would have a material financial effect on your property.² (See Regulations 18705.2(a)(10), (11).)

Section 87105, as interpreted in Regulation 18702.5, sets forth the manner in which a public official who sits on a public body whose members, such as city councilmembers, file Statements of Economic Interests under Section 87200 and who has a Section 87100 conflict of interest must disqualify him- or herself when the matter comes before the official at a public meeting of the body held pursuant to either the Bagley-Keene Act (Section 11120 et seq.) or Brown Act (Section 54950 et seq.). These provisions require the official to publicly identify his or her financial interest, disqualify him- or herself from participating in the matter, and leave the room during any discussion of the matter.

² Note that as the process progresses and decisions become interlinked to the ultimate disposition of the property near your property, you will have a conflict of interest. You should not construe this letter to apply beyond the facts that exist at this time and as you presented.

Public Generally exception

The public generally exception does not apply because more than 10 percent of the property in the jurisdiction would not be affected in the same manner as your property,

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini
General Counsel

By: Heather M. Rowan
Senior Counsel, Legal Division

HMR:jgl

LEGAL DIVISION ASSIGNMENT SHEET

Tracking Number:	14094
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ITEM DESCRIPTION			
Advice Letter No.	14-090	Requestor	Rubens, Gregory J.
Regulation Project No.			
Other (describe)			

Received By FPPC On:	05/06/14	Due Date:	06/05/14
Assigned To:	Heather	Date To Assignee:	05/08/14
Date sent to AG/DA (if 1090)		Date AG/DA respond, if any	

REVIEWERS	Date To Review	1st Approval & Date (Including Regulation Notices)	Date To Review	Final Approval & Date (Incl. Regulation Adoption Memos)
Proofed				
Senior		WJL		
TAD Chief (SEI, Campaign, Conflict of Interest Code letters)				
Assistant GC		JWW		
General Counsel				
Executive Director (discretion of GC)				
Chair (discretion of GC)				